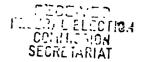
FEDERAL ELECTION COMMISSION 999 E Street, N.W. Washington, D.C. 20463



2005 JAN 18 A 11: 41

FIRST GENERAL COUNSEL'S REPORT

MUR: 5432

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DATE COMPLAINT FILED: March 15, 2004 DATE OF NOTIFICATION: March 22, 2004

DATE ACTIVATED: July 7, 20041

EXPIRATION OF SOL: January 7, 2009

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14 15 COMPLAINANT:

Honorable Bennie G. Thompson

RESPONDENTS:

Stephanie Summers-O'Neal

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Stephanie Summers-O'Neal for U.S. Congress and Deborah J. Thornton, in her official capacity

as treasurer

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RELEVANT STATUTE

AND REGULATION:

2 U.S.C. § 441d

11 C.F.R. § 110.11(c)

242526

INTERNAL REPORTS CHECKED:

Disclosure Documents

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FEDERAL AGENCIES CHECKED:

None

I. <u>INTRODUCTION</u>

In the Bipartisan Campaign Reform Act ("BCRA"), Congress added new requirements for disclaimers in television and radio advertisements paid for and authorized by a candidate's principal campaign committee. Such advertising must now include, *inter alia*, an audio statement delivered by the candidate. According to the complaint, Stephanie Summers-O'Neal for U.S. Congress ("the Committee") ran television advertisements that did not include an audio

The complaint notification was mailed on March 22, 2004, but a substantive response was submitted late, on October 15 and 29, 2004.

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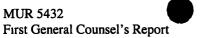
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- statement by Stephanie Summers-O'Neal, the candidate.² For the reasons set forth in more detail 1
- below, we recommend that the Commission find reason to believe that Stephanie Summers-2
- O'Neal and Stephanie Summers-O'Neal for U.S. Congress and Deborah J. Thornton, in her 3
- official capacity as treasurer, violated 2 U.S.C. § 441d and offer to enter into conciliation with 4
- the respondents prior to a finding of probable cause to believe. 5

II. **FACTUAL AND LEGAL ANALYSIS**

During the period preceding the 2004 primary election, Stephanie Summers-O'Neal for U.S. Congress ran television and radio advertisements introducing Stephanie Summers-O'Neal to the voters.³ Attachment 1. The advertisements contain a statement that the advertisement is paid for by the Committee and show the candidate speaking. The candidate also identifies herself but does not state that she has approved the communication. In addition, there is no written statement at the end of the television advertisement that identifies the candidate and states the candidate has approved the communication.

The subject advertisements ran in the Jackson, Mississippi metropolitan area in the three days preceding the March 9, 2004, primary election, airing 12 times on the WFMN radio station, 15 times on the WAPT television station, and 6 times on the WABG television station.

- Attachment 1, page 2. The Committee spent \$3,950 for the advertisements (\$700 for production, 17 \$360 for radio, and \$2,890 for television). *Id*. 18
 - The "stand by your ad" provision requires that radio and television communications paid

Stephanie Summers-O'Neal was a candidate for Mississippi's Second Congressional District in 2004.

We do not have a recording of the advertisements that actually aired but the candidate informed us that the contents of the advertisements were the same as in the "introductory video greeting" on the campaign's official web site at www.votestephanie.com (last accessed November 18, 2004), except the radio advertisements did not contain the video component. Attachment 1, page 2.

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- for or authorized by a candidate's principal campaign committee include, inter alia, an audio
- 2 statement by the candidate that identifies the candidate and states that the candidate has approved
- 3 the communication. 2 U.S.C. § 441d(d)(1); 11 C.F.R. § 110.11(c)(3). In television
- 4 communications, the audio statement must be conveyed by either an unobscured, full-screen
- 5 view of the candidate making the statement, or the candidate in voice-over, accompanied by a
- 6 clearly identifiable photographic or similar image of the candidate. 2 U.S.C.
- 7 § 441d(d)(1)(B)(i);11 C.F.R. § 110.11(c)(3)(ii). The statement must also appear in writing at the
- 8 end of the television communication in a clearly readable manner with a reasonable degree of
- 9 color contrast between the background and the printed statement, for a period of at least four
- 10 seconds. 2 U.S.C. § 441d(d)(1)(B)(i1); 11 C.F.R. § 110.11(c)(3)(i11).

In her response to the complaint, the candidate admits that she was featured in radio and television advertisements that did not include the required candidate statements. Attachment 1. Because the advertisements did not include the candidate statements, this Office recommends that the Commission find reason to believe that Stephanie Summers-O'Neal for U.S. Congress

and Deborah J. Thornton, in her official capacity as treasurer, violated 2 U.S.C. § 441d by failing

to include the required candidate statements in their advertisements. In addition, because the

statute places an affirmative obligation on the candidate by requiring the candidate specifically to

make the audio statement,⁴ this Office also recommends the Commission find reason to believe

that Stephanie Summers-O'Neal, the candidate, violated 2 U.S.C. § 441d by failing to state her

The legislative history of the BCRA contains a number of clear statements that the approval statement was intended to hold candidates accountable for the contents of their advertisements. *See* 148 *Cong. Rec.* S2692-3 (daily ed. March 22, 2001) (statements of Sen. Wyden and Sen. Collins); 148 *Cong. Rec.* S3126 (daily ed. March 29, 2001) (statement of Sen Durbin)

approval of the advertisements.⁵

2 III. <u>DISCUSSION OF CONCILIATION AND CIVIL PENALTY</u>

Stephanie Summers-O'Neal would be an internally generated respondent



2 3 4	Debora	1. Find reason to believe that Stephanie Summers-O'Neal for U.S. Congress and Deborah J. Thornton, in her official capacity as treasurer, violated 2 U.S.C. § 441d.				
5		2. Find reason to believe that Stephanie Summers-O'Neal violated 2 U.S.C. § 441d.				
6 7		3. Approve the attached Factual and Legal Analysis.				
8 9 10 11		4. Enter into conciliation with Stephanie Summers-O'Neal for U.S. Congress and Deborah J. Thornton, in her official capacity as treasurer, and with Stephanie Summers-O'Neal rior to a finding of probable cause to believe.				
12		5.	Approve the attached propose	d conc	iliation agreement and appropriate letter.	
13 14 15 16 17					Lawrence H. Norton General Counsel	
18 19 20 21 22 23 24 25 26 27 28	Date	1,4/0	75	BY:	Rhonda J. Vosdingh Associate General Counsel for Enforcement Jonathan A. Bernstein Assistant General Counsel	
29 30 31 32 33				•	Hominique Hillenseger Dominique Dillenseger Attorney	
34 35 36 37	Attachments: 1. Letter from Candidate, dated October 15, 2004 Letter from Candidate, dated October 29, 2004					
38			liation Agreement			
39	٥.	ractua	ll and Legal Analysis			